IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10324 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARISH JAGJIVANDAS PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10324 of 2003

MS JAYSHREE C BHATT for Petitioner No. 1

MR RM CHAUHAN Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 05/09/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Baroda City on

1.4.2003 under the exercise of powers under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds served upon the petitioner placed on record reveal that while reaching to the subjective satisfaction of passing the order impugned, the detaining authority took into consideration two aspects of the matter. Firstly, three crimes registered against the petitioner under sec. 66B, 65E of the Bombay Prohibition Act on 8.7.2002, 13.11.2002 and 12.3.2003 wherein the supply of about 20 to 25 liters of country liquor alleged to have been found in possession of the petitioner and, secondly, the detaining authority also relied upon in-camera statements of two witnesses recorded by the proposing authority on 24.3.2003 and verified by the detaining authority on 31.3.2003 revealing the incidents of 8.3.2003 and 20.3.2003 wherein in the first incident, the witness stated that the witness refused the petitioner to carry illegal liquor in his vehicle, on refusal the petitioner started beating the witness and when crowd was gathered, with open knife, the petitioner rushed towards the crowd and on account of fear of the petitioner, the crowd dispersed, the public order was disrupted and, therefore, there was atmosphere of fear and terror. In the second incident, which occurred on 20.3.2003, the witness stated that at Harni Road, the witness was stopped by the petitioner and on suspicion that the witness was offering information to the police, the petitioner started beating the witness and when crowd gathered like earlier incident, on fear of the petitioner nobody came to rescue the witness and the crowd was dispersed. From the above facts, the detaining authority passed the order impugned in this petition.

Ld. advocate Ms. JC Bhatt for the petitioner and Mr. RM Chauhan ld. AGP for the respondents were heard at length. Ld. AGP placed on record the affidavit of detaining authority, which is taken into consideration.

Out of various grounds contended on behalf of the petitioner and controverted by ld. AGP, it appears from the rival contentions, this special civil application can be disposed on the ground whether the detaining authority applied its mind properly as to the activities of the petitioner prejudicial to the public order and health. In this respect, on going through the record available with this court, it clearly transpires that by merely

registration of offences for the possession of the country liquor as mentioned above and on the dates as aforesaid would not lead to the satisfaction that public order was disturbed on account of registration of said offence. While we take into consideration the narration of the witnesses before the proposing authority and as verified by the detaining authority in the facts and circumstances of this case, it clearly appears that in both the incidents individual quarrel was picked up by the petitioner with the witnesses by which it could not be said that the public order was affected. The narration about gathering of crowd and dispersing the same on account of fear of the petitioner, also in the facts and circumstances of the case and as narrated by the witnesses before the proposing authority and if the same is taken at the face value would not lead to the conclusion that these two occasions caused disturbance in public order so as to involve large sections of the society or the terror was created amongst the locality which could not be taken care of by ordinary law and, therefore, these two incidents which are referred to by the witnesses and carefully going through the contents of the statements it appears that these are the cases of disturbance of law and order and not the case affecting the public order. The order impugned is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 1.4.2003 by the Police Commissioner, Vadodara city, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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